

20 March 2003  
Application No.09/804,618  
Docket: 1084

### c.) Remarks

Claims 1 through 24 are pending in this application. Claims 1, 4, and 12 have been amended in various particulars. New claims 23 and 24 have been added to alternatively define Applicants' invention.

Concerning one matter of procedure, a Supplemental Information Disclosure Statement was filed on September 18, 2002, and received in the U.S.P.T.O. on September 20<sup>th</sup>. Its associated 1449, however, was not received with the pending Office Action. Confirmation of the receipt of this Supplemental Information Disclosure Statement is respectfully requested.

Concerning the formal rejection of claim 12 under 35 U.S.C. 112, the dependency of claim has been corrected; this corrects the antecedent basis issue. Applicants thank the Examiner for noting this problem.

Turning now to the merits, Claims 1-12 were rejected under 35 U.S.C. § 102(e) as being anticipated by Miller, *et al.*

Generally, the Miller, *et al.* patent shows a similar membrane, implemented as a Fabry Perot tunable filter.

The present invention, however, is distinguishable insofar as it requires an optically curved surface on the deflectable membrane. In the Miller, *et al.* patent, the membrane was flat and had no lens or other curved surface.

The Office Action, however, analogized the optically curved surface of the claims to the convexities 127 on the Miller, *et al.* membrane. The convexities are used in Miller, *et al.* to prevent adhesion of the membrane to the handle wafer. They reduce the stiction levels in the event of snap down.

In contrast, the optically curved surface of the present application is directed to affecting the light that transmitted along the optical axis.

20 March 2003  
Application No.09/804,618  
Docket: 1084

To this end, claim 1 has been amended to require that the optically curved surface be on the optical axis of the membrane device. In contrast, the convexities 127 of the Miller, et al. device are outside of the optical port in order to affect stiction.

To further highlight the distinctions, claims 23 and 24 were added. Claim 23 requires that the optically curved surface be centered on the optical axis. Claim 24 requires that the optically curved surface be centered on the deflectable membrane.

For the foregoing reasons, The present claimed invention is distinguishable over the applied reference. Withdrawal of the rejections is requested.

Applicants believe that the present application is in condition for allowance. A Notice of Allowance is respectfully solicited. Should any questions arise, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

AXSUN TECHNOLOGIES, INC.

By 

J. Grant Houston, Esq.  
Registration No.: 35,900  
Tel.: (978) 262-0049  
Fax: (978) 262-0035

Billerica, Massachusetts 01821  
Date: 20 March 2003

FAX RECEIVED

MAR 20 2003

TECHNOLOGY CENTER 2800